IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Nand Kishore Malani & ors. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 63/2006
against the order dated 17-10-2005 passed
by the Chief Judicial Magistrate, Hanumangarh,
in Criminal Complaint Case No. 748/2005.

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Date of Order: September 06, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Sandeep Mehta, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 17-10-2005 passed by the Chief Judicial Magistrate, Hanumangarh (for short, "the trial Court" hereinafter), as also quashing the criminal proceedings in Criminal Complaint Case No. 748/2005 for the offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short, "the Act" hereinafter).

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the

impugned order as also the complaint filed by Raghunath Singh Shekhawat, the Food Inspector,, on 6.10.2005 before the trial Court.

In the title of the complaint, the petitioners have been arraigned as the accused as the partners of the manufacturing firm. Except in the title of the case, in the body of the complaint, no where it has been averred that the petitioners were the incharge of or responsible to the firm for conduct of the business of the firm. In the instant case, the manufacturer is M/s. Dinesh Tobacco Industry, which is a registered partnership firm.

It is contended by the learned counsel for the petitioners that in the instant case, the nomination has been made nominating Ashok Mehra S/o Roop Narain Mehra to be the incharge and responsible to the firm for conduct of the business of the firm. The nomination dated 29-7-2004 in Form No. VIII, Rule 12-B of the Prevention of Food Adulteration Rules, 1955 (for short, "the Rules, 1955" hereinafter), has been placed on record, which was received and acknowledged by the Local Health Authority on 29-7-2004, whereby Ashok Mehra has been nominated by the firm to be the incharge and responsible to the said firm for conduct of its business and authorized to exercise all the powers and to take all steps as expedient to prevent commission of any offence under the Act. Learned counsel has

relied on a Thee Judge Bench decision of the Hon'ble Sureme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr., 2005 Cr.L.R. (SC) 762, wherein the Hon'ble Apex Court, considering the provision of Section 141 of the Negotiable Instruments Act, 1881, which is para meteria of the provision of Section 17 (1) (a) (ii) of the Act, held that it is necessary to specifically aver in the complaint that at the time the offence was committed, the person accused was incharge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

In the instant case, Section 17 (1) (a) (ii) of the Act provides that where no person has been so nominated, every person who at the time the offence was committed was incharge of, and was responsible to, the company for the conduct of the business of the company is responsible. In whole of the complaint, there is no such averment. Not only this, there is specific case of the firm that Ashok Mehra has been nominated, as envisaged under Section 17 (1) (a) (i) of the Act, which was received by the Local Health Authority on 29-7-2004, therefore, the nominee is the incharge and responsible for the conduct of business of the firm for all practicable purposes. The nomination has been accepted by the Local Health Authority which is evident

from the material on record. In the circumstances, therefore, to allow the criminal proceedings to continue against the present petitioners would be nothing but an abuse of the process of the Court.

In the result, the criminal miscellaneous petition is allowed. The criminal proceedings in Criminal Complaint Case No.748/2005 pending in the Court of the Chief Judicial Magistrate, Hanumangarh, qua the present petitioners, are quashed. The stay petition stands disposed of.

(H.R. PANWAR), J.

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